



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 12, 2003

Ms. Sara Hartin  
Assistant City Attorney/Prosecutor  
City of Killeen  
P. O. Box 1329  
Killeen, Texas 76540-1329

OR2003-4066

Dear Ms. Hartin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182726.

The City of Killeen (the "city") received a request for specified training manuals and information pertaining to investigations occurring at a specified address and/or involving a specified person for a specified time interval. You indicate that you have released some responsive information to the requestor. You claim, however, that portions of the remaining requested information are not subject to the Public Information Act (the "Act"). In the alternative, you claim that this particular information, as well as the remainder of the remaining requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.103, 552.108, 552.130, and 552.305 of the Government Code.<sup>1</sup> We have considered your arguments and have reviewed the submitted information, which includes representative sample documents.<sup>2</sup>

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<sup>1</sup> We note that section 552.305 does not constitute an exception to disclosure under the Act. Accordingly, we do not address whether any portion of the remaining requested information is excepted from disclosure pursuant to section 552.305 of the Government Code.

<sup>2</sup> We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You claim that portions of the requested information constitute judicial records that are not subject to the Act. We note that the Act does not apply to records of the judiciary. *See* Gov't Code § 552.003(1)(B). After reviewing your representations and the submitted information, we are unable to determine whether and to what extent the records are maintained by the city's municipal court acting in its judicial capacity. Thus, to the extent that the information constitutes judicial records that are maintained solely by the city's municipal court, it is not subject to the Act. *But see* Attorney General Opinion DM-166 (1992); Open Records Decision No. 618 (1993) (acknowledging common-law right to copy and inspect certain judicial records). Otherwise, the information is subject to the Act and must be released, unless an exception to disclosure applies to the information. Accordingly, we address your claimed exceptions to disclosure based on a presumption that the information is not maintained solely by the city's municipal court acting in its judicial capacity.

You claim that the remaining requested information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.<sup>3</sup> Information must be withheld under the common-law right to privacy when (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor seeks copies of criminal investigative records in which a specified individual is identified. Thus, the request requires the city to compile information relating to this individual. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates the specified individual's right to privacy to the extent that it includes investigations where the named individual was a suspect, arrestee, or defendant in a case. Accordingly, we conclude that to the extent that the city maintains responsive information that reveals that the specified individual was a suspect, arrestee, or defendant in a case, such information must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

In summary, to the extent that the requested information constitutes judicial records that are maintained solely by the city's municipal court, it is not subject to the Act. Otherwise, the remaining requested information must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy to the extent that the

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<sup>3</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy.

city maintains responsive information that reveals that the specified individual was a suspect, arrestee, or defendant in a case.<sup>4</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

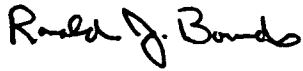
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

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<sup>4</sup> Because we base our ruling on section 552.101 of the Government Code, we need not address the applicability of your remaining claimed exceptions to disclosure.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 182726

Enc. Submitted documents

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(w/o enclosures)